

NEW MEXICO PUBLIC EDUCATION DEPARTMENT  
PROCEEDINGS BEFORE THE DUE PROCESS HEARING OFFICER

MELISSA FLORES

on behalf of J [REDACTED] M [REDACTED]  
Petitioner,

vs.

DPH 1314-23

ESPAÑOLA PUBLIC SCHOOLS

Respondent.

MEDIATED COMPROMISE SETTLEMENT AGREEMENT

THIS COMPROMISE MEDIATED SETTLEMENT AGREEMENT is made and entered into pursuant to 34 C.F.R. § 300.506 by and among Melissa Flores, individually and on behalf of J [REDACTED] M [REDACTED] (collectively referred to as "PETITIONER"), and the Española Public Schools (referred to as "RESPONDENT" or "EPS" or "District") in settlement of any and all claims between the parties under the Individuals with Disabilities Education Act through the date of this Agreement.

PETITIONER and RESPONDENT, desiring to resolve all claims arising under the Individuals with Disabilities Education Act (IDEA) through the Effective Date of this Agreement, agree to the following:

1. RESPONDENT and PETITIONER agree that a residential treatment center with expertise in working with students with autism and capacity to provide a full day of educational services presently constitutes J [REDACTED] least restrictive environment for educational purposes and that Bayes Achievement Center in Huntsville, Texas can implement J [REDACTED] Individualized Education Program (IEP) and meet his educational needs.
2. RESPONDENT and PETITIONER understand and agree that when a student is placed in a residential treatment center by the IEP Team, the program, including nonmedical care and room and board must be at no cost to the parents of the student.
3. RESPONDENT and PETITIONER understand and agree that J [REDACTED] is currently a Medicaid recipient. The parties agree that they will seek to have any medical costs covered by J [REDACTED] Medicaid Insurance Provider (currently Presbyterian Health Plan, Inc. through Centennial Care), except program costs associated with Bayes Achievement Center which will be the responsibility of the District. RESPONDENT and PETITIONER further understand that ordinary psychiatric costs are included within Bayes Achievement Center program costs. Therefore, the parties will not seek to have Josiah's Medicaid Insurance Provider cover those psychiatric costs that are included

within program costs. If there are costs that are of the type for which the District may seek reimbursement through the Medicaid School-Based Services Program, RESPONDENT reserves the right to seek reimbursement.

4. RESPONDENT and PETITIONER understand that because J [REDACTED] is a Medicaid recipient he is eligible to have his medical care covered by Medicaid and that PETITIONER should not be charged for any medical, behavioral, pharmaceutical, dental or other health care costs for J [REDACTED] and she is not consenting to any such costs. See NMAC 8.200.430.16(A) (A Medicaid provider agrees to accept the amount paid as payment in full with the exception of co-payment amounts required in certain Medicaid eligibility categories [42 CFR 447.15]. Other than the co-payments, a provider cannot bill an eligible recipient for any unpaid portion of the bill (balance billing) or for a claim that is not paid because of a provider administrative error or failure of multiple providers to communicate eligibility information.) Therefore, RESPONDENT will include in its contract with Bayes that Bayes will coordinate with J [REDACTED] NM Medicaid Insurance Provider (currently Presbyterian Health Plan, Inc. through Centennial Care) to obtain prior approval before incurring any medical, behavioral, pharmaceutical, dental or health care costs for J [REDACTED] except in an emergency. In addition, RESPONDENT will include a provision in the contract with Bayes that Bayes will coordinate with J [REDACTED] Presbyterian NM Medicaid Insurance Provider (currently Presbyterian Health Plan, Inc. through Centennial Care) to determine any requirements necessary to access emergency care for Josiah, if needed, and comply with such requirements in the event of an emergency. RESPONDENT will include provision in its contract with Bayes that Bayes will follow New Mexico Medicaid procedures, as required by J [REDACTED] NM Medicaid Insurance Provider (currently Presbyterian Health Plan, Inc. through Centennial Care), when arranging needed medical care for J [REDACTED]. RESPONDENT will include provision in its contract with Bayes that in the event that NM Medicaid does not approve a requested service, Bayes agrees to convene an IEP meeting to discuss options for obtaining needed care.
5. RESPONDENT and PETITIONER further understand that as a Medicaid-eligible patient, J [REDACTED] Medicaid Insurance Provider (currently Presbyterian Health Plan, Inc. through Centennial Care) is responsible for paying for medically necessary services that Josiah requires including, if required, medical transport to and from his residential treatment center, travel expenses for the family as necessary to meet J [REDACTED] medical (including psychiatric and behavior therapy) needs, and on-going medical services during J [REDACTED] placement in a residential treatment center. The parties have worked together to obtain reasonable assurance that Presbyterian Health Plan, Inc. will pay for these services while J [REDACTED] attends the Bayes Achievement Center and have obtained such assurance.
6. The parties agree and understand that accessing free appropriate public education is not and will not be contingent on J [REDACTED] having any restriction on medical coverage that J [REDACTED] would be eligible for if he were receiving services in New Mexico. Therefore, a denial of medical coverage or care will trigger a review of Josiah's IEP and identification of an alternative location for the delivery of services.



7. RESPONDENT and PETITIONER understand and agree that the District is not obligated to pay for any medical care that does not constitute a related service. The parties further understand that physician provided services are excluded from the IDEA and therefore are not the responsibility of the District. If J [REDACTED] requires medical care that is not covered by Medicaid as a result of his out of state placement, the District will either pay for such care (if it constitutes a related service) or will promptly hold an IEP Meeting to identify another appropriate placement closest to home that can provide J [REDACTED] with a free appropriate public education in a timely manner.
8. If J [REDACTED] is hospitalized due to serious injury or illness, the parties agree to seek Medicaid transport of the family. In the event that Medicaid does not cover transportation in these instances, the District will pay for and arrange for family transportation to the hospital to which J [REDACTED] is admitted. If J [REDACTED] is released from a hospital after a serious injury or illness and Bayes determines that J [REDACTED] family should visit, the District will pay for and arrange family transportation to Bayes. If transportation under this section is provided by the District, Bayes will determine whether the subsequent regular monthly family visit as set forth in paragraph 23 is necessary.
9. RESPONDENT and PETITIONER agree that if J [REDACTED] Medicaid Insurance Provider does not provide transportation at least monthly for Petitioner to visit J [REDACTED] and participate in behavior therapy, the District will pay for and assist the family in making arrangements to visit J [REDACTED] at Bayes Achievement Center on a monthly basis as follows:
  - a. District funded trips will be entirely dedicated to J [REDACTED] his behavior therapy, his program and progress at Bayes Achievement Center, and program efforts to successfully transition him to his home and community. District funded travelers will participate in any activities designated by Bayes Achievement Center and may include participating in any parent training or family therapy, attending any treatment team or IEP team meetings, observing or participating in program activities, and participating in any outings.
  - b. District funded transportation will be for a maximum of 3 nights per visit unless the IEP Team specifies otherwise due to a specific need.
  - c. District will book the flights and keep for its exclusive use any frequent flyer miles.
  - d. PETITIONER will facilitate the District's access to and use of frequent flyer miles for District funded transportation including by allowing access to frequent flyer numbers and providing passwords to access miles for any District funded traveler. Any traveler who denies or impedes access to miles generated from District funded transportation may be denied District funded transportation.

- e. District funded transportation will be limited to J [REDACTED] mother plus one family member and one hotel room.
- f. District will select a hotel that is in walking distance of two restaurants. District will book and pay for the hotel room.
- g. District funded travelers will use taxi service designated by District for travel between Houston airport, hotel and Bayes-designated locations. Unless the District is able to secure a contract with a taxi service, taxi service between these locations will be reimbursed by the District with appropriate receipts. Only taxi service between these locations will be subject to reimbursement by the District. Alternatively, with prior approval of the rental car rate, J [REDACTED] mother or other family traveler may rent a car and be reimbursed for the rental car.
- h. Unless transportation is otherwise provided by the District, the District will reimburse mileage for one round-trip between Espanola and the Albuquerque International Airport and reimburse parking for one car at a long-term airport parking lot, regardless of the number of District funded travelers. The owner of the vehicle claiming mileage must complete the District's required reimbursement forms and satisfy all District requirements for mileage and parking reimbursement in order to obtain such reimbursement. If J [REDACTED] mother is unable to drive or obtain transportation to the Airport, she must notify the District at least five business days in advance of travel so that the District can arrange to transport her.
- i. Meals for District funded travelers will be reimbursed on a per diem basis at the District-approved per diem amount at the time of travel (currently \$30.00 per day).
- j. School official(s) may accompany District funded travelers on any District funded trip. If accompanied by a school official, paragraphs g. and h. will not apply if the school official rents the car/provides the transportation.
- k. Travel dates and times must be pre-approved by Bayes Achievement Center and must allow for the accomplishment of any Bayes Achievement Center identified activities for the trip. This may mean that travel may need to occur during the week rather than on a weekend.
- l. Travel dates and times must be confirmed with District three weeks in advance of travel (unless the travel is emergency travel pursuant to Paragraph 8 above). If changes are made less than 3 weeks prior to travel, PETITIONER will be responsible for any increased costs of travel or the trip may be canceled.



- m. Reimbursement claims submitted pursuant to Paragraph 9 must comply with Board policy and procedures. Eligible claims under Paragraph 9 that comply with Board policy and procedures shall be reimbursed within 10 business days. RESPONDENT's Special Education Director will contact PETITIONER to review applicable policies and procedures and provide the applicable forms.
10. RESPONDENT and PETITIONER agree to amend J [REDACTED] IEP without a meeting to reflect:
- a. Bayes Achievement Center is an appropriate location to implement J [REDACTED] IEP (subject to contract approval by the New Mexico Public Education Department);
  - b. J [REDACTED] is to receive a full school day/week of educational services (29 hours per week excluding lunch and recess) including special education and behavioral support (27 hours per week); speech therapy as a related service 1.0 hour per week; and occupational therapy as a related service 1.0 hour per week;
  - c. J [REDACTED] is to receive non-medical care and room and board while at Bayes Achievement Center; and
  - d. J [REDACTED] is to participate in an evaluation period of 30-60 days to be conducted by Bayes Achievement Center, with an IEP meeting to be held at the conclusion of the evaluation period to review/revise the IEP as appropriate.
11. RESPONDENT and PETITIONER agree to convene another IEP meeting on a mutually agreeable date and time but before the annual due date of September 19, 2014 to conduct his annual IEP meeting. In the meantime, the parties agree that J [REDACTED] IEP as amended constitutes a free appropriate public education (FAPE) in the least restrictive environment.
12. RESPONDENT agrees to issue to J [REDACTED] mother an iPad with FaceTime (or other comparable tablet and Wi-Fi-based videoconferencing) for the purpose of communicating with residential treatment center staff, participating in any staffings, trainings or meetings with the residential treatment center, and seeing and communicating with J [REDACTED]. PETITIONER agrees to utilize Wi-Fi services available to her through family members and within the community.
13. RESPONDENT and PETITIONER understand that Bayes Achievement Center has agreed to waive any activity fee that may typically be charged to parents by Bayes Achievement Center for participating in weekend activities with other residents and J [REDACTED] will be able to participate in weekend activities with other residents unless there is an individualized reason why he should not do so.

14. RESPONDENT agrees to contract with Jill Basso, a Board Certified Behavior Analyst (BCBA) for up to 10 hours per semester to review data from J [REDACTED] residential treatment center and consult with the District and parent regarding the progress data for as long as J [REDACTED] remains in a residential treatment center pursuant to an IEP. RESPONDENT further agrees to contract with Jill Basso to participate either in-person or by telephone in any IEP meeting held concerning J [REDACTED] during the next two school years (2014-2015 and 2015-2016), including IEP meetings held to discuss J [REDACTED] placement in a residential treatment center and his transition from residential treatment, and to observe him one time, or more if determined necessary by J [REDACTED] IEP Team, at Bayes Achievement Center prior to any transition from the Center. Recognizing that Jill Basso is not employed by RESPONDENT to deliver the services described in this Agreement, PETITIONER agrees not to hold RESPONDENT responsible should Jill Basso be unable or unwilling to fulfill the activities specified in this Agreement. If Jill Basso is unable or unwilling to fulfill the activities specified in this Agreement, RESPONDENT and PETITIONER agree to work together to adjust timeframes or identify an alternative behavior specialist to perform the services contemplated in this Agreement to be performed by Jill Basso. PETITIONER and RESPONDENT may amend the terms of this paragraph by written agreement signed by both parties subsequent to the date of this Agreement.
15. RESPONDENT and PETITIONER agrees that transitioning J [REDACTED] from residential treatment will include training for staff as determined appropriate by the IEP Team and with consideration of the recommendations from Jill Basso and Bayes Achievement Center.
16. RESPONDENT agrees that J [REDACTED] may continue to receive special education and related services from the District through the 2020-2021 school year (one school year beyond J [REDACTED] IDEA age eligibility) so long as from the date of this Agreement forward, PETITIONER annually provides and maintains consent for the District to access J [REDACTED] Medicaid benefits to pay for special education and related services pursuant to 34 CFR § 300.154(d), and further maintains such consent throughout the 2020-2021 school year. RESPONDENT agrees that if any future changes to the New Mexico Medicaid program occur such that PETITIONER's consent to allow District to access Josiah's Medicaid benefits for special education and related services jeopardizes or reduces J [REDACTED] Medicaid benefits, PETITIONER's consent will no longer be necessary and RESPONDENT will continue to be obligated to provide special education and related services to J [REDACTED] through the 2020-2021 school year. In addition, if at any time J [REDACTED] is no longer a Medicaid recipient, the District shall not require PETITIONER's consent to allow District to access J [REDACTED] Medicaid benefits for special education and related services, and RESPONDENT will continue to be obligated to provide special education and related services to J [REDACTED] through the 2020-2021 school year. If J [REDACTED] obtains other insurance coverage, PETITIONER agrees to consent to allow the District to access J [REDACTED] other insurance for special education and related services as long as doing so does not increase premiums, result in decreased benefits or a discontinuation of benefits. RESPONDENT agrees that if the District accesses Medicaid or private insurance for



special education and related services that includes a co-pay or deductible, RESPONDENT will be responsible for payment of any co-pay or deductible.

17. PETITIONER agrees that, except as stated in Paragraph 16 (above), if consent to access Medicaid benefits is revoked at any time during this period, Paragraph 16 becomes void and PETITIONER is not entitled to the additional school year of services. PETITIONER further agrees that Paragraph 16 becomes void if Josiah's mother is no longer residing in the District at the time he turns 22 or at any time during the 2020-2021 school year.
18. RESPONDENT agrees to contract with a facilitator from the PED list of IBP facilitators to facilitate in any IBP meeting held concerning J [REDACTED] during the next two school years (2014-2015 and 2015-2016). For each of these IBP meetings, PETITIONER shall identify three acceptable facilitators from the list, and RESPONDENT shall choose the facilitator from the three identified by PETITIONER. If PETITIONER offers a name that is unavailable, then PETITIONER shall select another name from which RESPONDENT may choose. RESPONDENT and PETITIONER may mutually agree to extend the timeframe for conducting the IBP meeting in order to accommodate the schedule of a facilitator, or mutually agree in writing to waive this requirement for a particular IBP meeting.
19. PETITIONER agrees to consent to the release and exchange of confidential information and further agrees to sign consent to such release and exchange of such confidential information protected by the Family Educational Rights and Privacy Act (FERPA), the IDEA and the Health Insurance Portability and Accountability Act (HIPPA) between RESPONDENT and the following individuals/entities:
  - a. Jill Basso;
  - b. Any behavior specialist who provides services in place of Jill Basso;
  - c. Gay Finlayson;
  - d. Presbyterian Health Services; and
  - e. New Mexico Health Services Department.
20. PETITIONER further agrees to maintain such consent through the duration of the services described in this Agreement. PETITIONER and RESPONDENT agree that the consent for release of confidential information between RESPONDENT and Presbyterian Health Services and the New Mexico Health Services Department may be limited to such information as is necessary for the coordination of services between RESPONDENT and Medicaid.
21. RESPONDENT agrees to request that Bayes Achievement Center provide electronic notice of the quarterly treatment plan review meetings normally conducted by Bayes to Ms. Basso, Ms. Finlayson, Presbyterian, Respondent and Petitioner and to electronically provide all parties with any relevant documents at least five days prior to any such meeting, if available at the time. RESPONDENT further agrees to request that Bayes Achievement Center provide to Ms. Basso, Ms. Finlayson, Presbyterian, Respondent and

Petitioner a dial-in number so that they may participate telephonically in these treatment team meetings.

22. RESPONDENT agrees to request that Bayes Achievement Center hold education progress meetings every other month to discuss, among other things, J[REDACTED] progress. RESPONDENT agrees to request that Bayes Achievement Center provide electronic notice of these education progress meetings to Ms. Basso, Ms. Finlayson, Respondent and Petitioner and to electronically provide all parties with any relevant documents at least five days prior to any such meeting, if available at the time. RESPONDENT further agrees to request that Bayes Achievement Center provide to Ms. Basso, Ms. Finlayson, Respondent and Petitioner a dial-in number so that they may participate telephonically in these education progress meetings.
23. RESPONDENT agrees to include a provision in the contract with Bayes that requires monthly behavior therapy sessions to include Josiah and PETITIONER so that PETITIONER is able to learn about his treatment goals and needs and to provide her with training about how to support his progress when he returns home.
24. RESPONDENT agrees to invite Gay Finlayson to participate telephonically in all IEP Team meetings for J[REDACTED] while he is at Bayes Achievement Center including any IEP meetings related to transition of J[REDACTED] out of Bayes and to attempt to accommodate her schedule to allow for her to participate in the meeting.
25. PETITIONER agrees to release, and does hereby release, RESPONDENT Española Public Schools, including their officials, employees, officers and agents, from any and all claims under the Individuals with Disabilities Education Act (IDEA), whether now known or unknown, including but not limited to any claims for independent evaluations, reimbursement, compensatory services and attorneys' fees, arising from any acts or omissions of RESPONDENT through the effective date of this Agreement.
26. This Agreement shall not be construed as an admission of liability or of any wrongful act or omission by any party, such liability and wrongdoing being expressly denied by RESPONDENT. Rather, RESPONDENT and PETITIONER mutually acknowledge and represent that this is a compromise in resolution of disputed IDEA claims.
27. Within 30 calendar days of the effective date of this Agreement, RESPONDENT shall pay attorney's fees in the amount of thirty nine thousand, five hundred and fifty six dollars and 84/100 (\$39,556.84) for the full release of all PETITIONER's IDEA claims, the sufficiency of which is hereby acknowledged. Payment of the attorney's fees and costs in the amount of \$22,348.54 shall be made by check made payable to Law Office of Debra Poulin, Attorney at Law, 7 Avenida Vista Grande, Suite B-7 PMB 431, Santa Fe, NM 87508. Payment of the attorney's fees and costs in the amount of \$17,208.00 shall be made by check made payable to Pegasus Legal Services for children.
28. Within 30 calendar days of the effective date of this Agreement, RESPONDENT shall reimburse parent for services delivered by Ms. Basso on May 5, 2014, in the amount of



two hundred and eighty five dollars (\$285.00). Payment shall be made by check payable to Law Office of Debra Poulin, Attorney at Law, 7 Avenida Vista Grande, Suite B-7 PMB 431, Santa Fe, NM 87508.


29. PETITIONER agrees to submit a motion to dismiss, with prejudice, the proceeding now pending before an independent due process hearing officer for the State of New Mexico, Docket No. 1314-23, within two business days from the Effective Date of this Agreement.
30. RESPONDENT and PETITIONER understand that this Agreement is binding and enforceable in any State court of competent jurisdiction or in a district court of the United States pursuant to 34 C.F.R. § 300.510(d)(2).

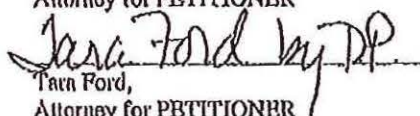
IN WITNESS WHEREOF, the parties have executed this Agreement, to be effective upon the Execution Date below.

Date Signed: September 11, 2014  
("Execution Date" and "Effective Date")

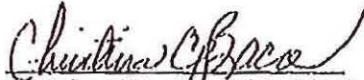
  
Melissa Flores, individually and on behalf  
of J [REDACTED]

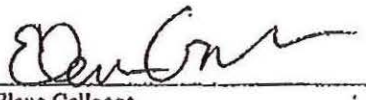
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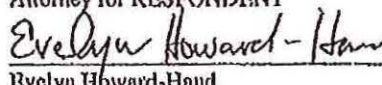
  
Debra Poulin,  
Attorney for PETITIONER

  
Tara Ford,  
Attorney for PETITIONER

Espanola Public Schools

By:   
Representative of Espanola Public Schools  
("EPS") with Decision-Making Authority  
on behalf of EPS

  
Blana Gallegos,  
Attorney for RESPONDENT

  
Evelyn Howard-Hand,  
Attorney for RESPONDENT